U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: OCT 3 0 2013 Office: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed two subsequent appeals. The matter is again before the AAO on motion to reopen and reconsider. The motion to reopen will be dismissed. The motion to reconsider will be granted and the matter will be reconsidered. Upon review of the matter, the AAO's prior decisions dated January 29, 2013 and June 7, 2013 are affirmed. The petition remains denied.

The petitioner[1] is engaged in trading, distributing, recycling and compounding post-industrial plastics raw materials. It seeks to employ the beneficiary permanently in the United States as a senior international marketing analyst.[2] As required by statute, the petition is accompanied by a Form ETA 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Master's degree in business administration.
H.5. Training: None required.
H.6. Experience in the job offered: 6 months.
H.7. Alternate field of study: Accepted, in international business.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: None.

The director determined that the petitioner had not established that the beneficiary had the requisite education for the job offered and denied the petition accordingly. The AAO found that the beneficiary does not have an advanced degree and is therefore not eligible for classification under section 203(b)(2) of the Act, and that the beneficiary does not meet the educational requirements on the labor certification to qualify for the job offered.

The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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[1] The petitioner's address on the Form I-290B is [redacted] but it is listed as [redacted] on the California Secretary of State website. *See* http://kepler.sos.ca.gov/ (accessed October 28, 2013). The petitioner should resolve this discrepancy in any future filings.

[2] The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

Motion to Reopen

The regulation at 8 C.F.R § 103.5 provides in pertinent part that "a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." "New" facts are those that were not available and could not reasonably have been discovered or presented in the previous proceeding. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner has not stated new facts in his motion which are supported by documentary evidence. The motion to reopen will therefore be dismissed.

Motion to Reconsider

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [United States Citizenship and Immigration Services (USCIS)] policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner has stated reasons for reconsideration and cited a precedent decision in support of its request for reconsideration. The motion to reconsider will be granted and the matter, therefore, will be reconsidered.

Counsel asserts that: the beneficiary has a U.S. Master's degree in International Business from the position offered requires a Master's degree in Business Administration; the regulation at 8 C.F.R. § 204.5(k)(2) does not explicitly state that the degree must be from an accredited university or college to qualify as an advanced degree; the regulation plainly states that an "advanced degree means any United States academic or professional degree or foreign equivalent degree above that of a baccalaureate;" USCIS is imposing additional criteria above the ones plainly and explicitly provided by the regulatory language; in *Kazarian v. USCIS,* 580 F.3d 1030 (9th Cir. 2009), *aff'd in part* 596 F.3d 1115 (9th Cir. 2010), the court found that the AAO imposed additional criteria in an extraordinary ability case; *Love Korean Church v. Chertoff,* 549 F.3d 749 (9th Cir. 2008) and *Soltane v. U.S. Dept. of Justice*, 381 F.3d 143 (3d Cir. 2004), involve AAO imposition of additional requirements and an interpretation inconsistent with a regulation; the modifier "United States" refers to the geographical region of the United States, referring to non-foreign degrees as opposed to foreign degrees; the modifier "United States" must not bear further meaning in regard to the accreditation of the universities in question; and pursuant to the plain language of the regulation, an advanced non-foreign degree must be simply a degree issued by a United States university or college

Counsel states while he may agree that in California, the Bureau for Private Postsecondary Education (BPPE) is a lower endorsement than a national accreditation, "operating at basic levels of

quality" as stated on the Department of Education website in regard to the grant of accreditation and "satisfying the minimum operating standards" as stated by the California Education Code guidelines are close to identical in meaning, resulting in the same basic/minimal level of requirements for approval by the national and local accrediting agencies and BPPE.

Counsel asserts that if accreditation is used as an indication of the quality of education, then accreditation or lack thereof is a moot point, as the issue in question is not related to the quality of the beneficiary's education. While counsel states that he may agree that the beneficiary's quality of education may be lower than education obtained through an accredited university, counsel asserts that the fact that the beneficiary obtained a master's degree fulfills the requirement of the instant petition.

Counsel asserts that the labor certification and recruitment do not explicitly state that the master's degree must be from an accredited institution and that the institution must be found on the U.S. Department of Education (DOE) Database of Accredited Postsecondary Institutions and Programs.

Counsel asserts that California International University is a Student and Exchange Visitor Information System (SEVIS) certified school authorized to issue I-20 forms for F-1 (student), M-1 (vocational student) and J-1 (exchange visitor) visas. Therefore, pursuant to the doctrine of estoppel, counsel states that USCIS must be prevented from rejecting the beneficiary's advanced degree from [redacted] as such rejection is contrary to the previous act of accepting the same university for other visa application and recognizing the institution as compatible with the requirements of immigration regulations. However, the AAO has no authority to address an equitable estoppel claim. The AAO, like the Board of Immigration Appeals, has no authority to apply the doctrine of equitable estoppel so as to preclude a component part of USCIS from performing a lawful action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente,* 20 I&N Dec. 335, 338 (BIA 1991). The AAO's jurisdiction is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation No. 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2004). AAO's jurisdiction is also limited to those matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

Counsel has not provided precedent decisions to support most of his claims. In regard to his claim that USCIS is imposing additional criteria above the ones plainly and explicitly provided by the regulatory language, the AAO does not agree based on the discussion below.

The beneficiary possesses a Master's degree from [redacted] which has not been accredited by a recognized accrediting agency. For the reasons set forth below, a degree from an unaccredited institution will not be considered an advanced degree under 8 C.F.R. § 204.5(k)(2).

In the United States, institutions of higher education are not authorized or accredited by the federal

government.[3] Instead, the authority to issue degrees is granted at the state level. However, state approval to operate is not the same as accreditation by a recognized accrediting agency.

According to the DOE, "[t]he goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable levels of quality."[4] Accreditation also ensures the nationwide recognition of a school's degrees by employers and other institutions, and also provides institutions and its students with access to federal funding.

Accrediting agencies are private educational associations that develop evaluation criteria reflecting the qualities of a sound educational program, and conduct evaluations to assess whether institutions meet those criteria.[5] Institutions that meet an accrediting agency's criteria are then "accredited" by that agency.[6]

The DOE and the Council for Higher Education Accreditation (CHEA) are the two entities responsible for the recognition of accrediting bodies in the United States. While the DOE does not accredit institutions, it is required by law to publish a list of recognized accrediting agencies that are deemed reliable authorities as to the quality of education provided by the institutions they accredit.[7]

The CHEA, an association of 3,000 degree-granting colleges and universities, plays a similar oversight role. The presidents of American universities and colleges established CHEA in 1996 "to strengthen higher education through strengthened accreditation of higher education institutions."[8] CHEA also recognizes accrediting organizations. "Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established."[9] According to CHEA, accrediting institutions of higher education "involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort."[10]

The ETA Form 9089, section J related to where the beneficiary obtained his education lists the address of [redacted] California [redacted] The DOE and CHEA recognize [redacted] as the accrediting association with jurisdiction over California, where [redacted] is located.[11] [redacted] website lists all accredited

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[3] *See* http://ope.ed.gov/accreditation.
[4] http://www2.ed.gov/print/admins/finaid/accred/accreditation.html.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf.
[9] *Id.*
[10] *Id.*
[11] *See* http://www.chea.org/Directories/regional.asp.

institutions within its jurisdiction. is not named as one of the accredited institutions. *See* http://directory.wascsenior.org/institutions (accessed September 9, 2013). Therefore, has not been accredited by a recognized accrediting agency.

While is approved to operate in BPPE, the fact remains that it is an unaccredited institution. The State of California acknowledges that "accreditation as an indication of the quality of education offered," and that institutions "must be accredited by an agency recognized by the [DOE] in order for it or its students to receive federal funds." http://www.cpec.ca.gov/x_collegeguide_old/accreditation.asp. California's Education Code states that approval to operate in California is granted after the BPPE has verified that the institution "has the capacity to satisfy the minimum operating standards." Cal. Ed. Code § 94887.

Accreditation provides assurance of a basic level of quality of the education provided by an institution as well as the nationwide acceptance of its degrees. A degree from a state approved institution that is unaccredited does not provide a sufficient assurance of quality. Therefore, since the beneficiary's Master's degree from is not from an accredited institution of higher education, it does not qualify as an advanced degree within the meaning of 8 C.F.R. § 204.5(k)(2).

The AAO rejects counsel's claim that the beneficiary's degree from should be accepted as an advanced degree because U.S. Immigration and Customs Enforcement has approved the school to enroll foreign students under the Student and Exchange Visitor Program. The approval of an institution to enroll nonimmigrant foreign students pursuant to 8 C.F.R. § 214.3 is unrelated to the requirements for immigrant classification as an advanced degree professional. A broad range of educational institutions may be approved to enroll foreign students, including community colleges, junior colleges, seminaries, conservatories, high schools, elementary schools, and institutions which provide language training, instruction in the liberal arts or fine arts, and/or instruction in the professions. *Id.* The fact that an institution is authorized to enroll nonimmigrant students does not mean that its degrees meet the requirements of an advanced degree under 8 C.F.R. § 204.5(k)(2).

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.[12] Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

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[12] As set forth above, the labor certification allows only for the requirement of a master's degree and does not set forth any alternate combination of education and experience in the form of the regulatory defined bachelor's degree plus at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2).

Similarly, as is unaccredited, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany* v. *Smith,* 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc.* v. *Coomey,* 661 F.2d 1 (1st Cir. 1981).

As discussed above, the AAO does not consider the beneficiary to have a master's degree. As such, the evidence in the record does not establish that the beneficiary possessed the required education set forth on the labor certification by the priority date. Therefore, the petitioner has also failed to establish that the beneficiary is qualified for the offered position.

The beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. Furthermore, the petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. The director's decision denying the petition is affirmed.

Furthermore, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be dismissed for this reason.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. In the current matter, the petitioner has not met that burden.

ORDER: The motion to reopen is dismissed. The motion to reconsider is granted and the petition is reconsidered. The previous decisions of the AAO dated January 29, 2013 and June 7, 2013 are affirmed. The petition remains denied.